

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JAMES Q. WILKINSON,

Plaintiffs,

V.

ELDON VAIL, et al.,

Defendants

Case No. C05-5656.JKA

ORDER GRANTING PLAINTIFF'S FIRST MOTION IN LIMINE

This matter comes before the Court on Plaintiff's First Motion in Limine regarding segregation/allocation/apportionment of default among or between named defendants and plaintiff's alleged assailants. The court has reviewed plaintiff's motion, defendant's response, and plaintiff's reply as well as the files and records herein.

Plaintiff seeks damages under both state and federal law. Both parties focus their arguments on *Tegman v. Accident & Medical Investigations, Inc.*, 150 Wn.2d 102, 75 P.3d 497 (2003); *Welch v. Southland Corporation*, 134 Wn.2d 629, 952 P.2d 162 (1998), and RCW 4.22.070.

This court has carefully reviewed the foregoing citations and considered them in the context of the claims in this case and rules as follows:

1. Federal Claims. It does not appear that the relief sought by plaintiff is with regard to federal claims. Nonetheless, out of an abundance of caution, the court grants plaintiffs motion to the extent it might be interpreted to include federal claims.

2. State Law Claims. As state above, the court has carefully considered the authorities cited. As applied to the facts in this case this court understands that *Tegman* might be subject to more than one

1 interpretation. The court notes that four Justices signed the opinion, four Justices dissented, and the remaining
2 Justice did not participate in the decision. This court's reading of *Tegman* as applied to the parties in this case
3 is consistent with plaintiff's reply (Doc#122) and the court adopts that portion of the brief commencing at page
4 2, line 14 thru page 3, line 16.

5 Accordingly Plaintiff's First Motion in Limine is Granted with regard to both state and federal claims.

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7 Dated this 13th day of April, 2007.

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9 /s/ **J. Kelley Arnold**
J. Kelley Arnold, U.S. Magistrate Judge

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